

Form No. J(2)

In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side

Present: The Hon'ble Justice Sabyasachi Bhattacharyya
And
The Hon'ble Justice Uday Kumar

FMA 758 of 2025
IA No: CAN 1 of 2025

Amit Shaw and another
Vs.
The Authorized Officer, PNB Housing
Finance Limited and others

For the appellants : Mr. Surya Prasad Chattopadhyay,
Mr. Arjun Samanta,
Mr. Ankit Chatterjee

For the respondent
nos.1 & 2 : Mr. Sayak Ranjan Ganguly,
Ms. Srijani Ghosh,
Ms. Indrani Majumdar

Heard on : 16.06.2025

Judgment on : 16.06.2025

Sabyasachi Bhattacharyya, J.:-

1. In view of sufficient arguable questions of law and fact having been raised, we admit the appeal to be heard on the grounds taken in the memorandum of appeal.
2. Since both the contesting parties are represented by counsel and the ambit of the appeal is extremely short, co-extensive with the scope of hearing of the injunction application filed in connection therewith , on

consent of the parties, we are taking up the appeal and the application together for hearing

3. The plaintiffs/appellants have filed a suit claiming their title and seeking injunction in respect of a property which, according to the plaintiffs, is not the subject-matter of the mortgage created by the plaintiffs in favour of the PNB Housing Finance Limited, of which the defendants/respondents are key functionaries.
4. It is contended that despite such factual position, the defendants/respondent nos. 1 and 2, on behalf of the PNB Housing Finance Limited, are seeking to disturb the plaintiffs' possession and encumber the property unlawfully.
5. The learned trial Judge, it is argued by the appellants, dismissed their injunction application without taking into consideration such facts.
6. Learned counsel appearing for the contesting respondent nos. 1 and 2 submits that the PNB Housing Finance Limited has already initiated an application under Section 9 of the Arbitration and Conciliation Act, 1996 in Delhi, where an ad interim prayer having been refused, a challenge has been preferred against the same. It is submitted that by virtue of the present injunction, the plaintiffs are seeking to frustrate the said proceeding.
7. However, we find upon hearing learned counsel for the parties that *prima facie*, the subject property involved in the present suit is not a secured asset in the mortgage created by the plaintiffs/appellants in favour of PNB Housing Finance Limited and, as such, the respondent

nos. 1 and 2 cannot encumber or charge the suit property and/or disturb the peaceful possession of the plaintiffs in respect thereof without due process of law.

8. Accordingly, FMA 758 of 2025 along with IA No: CAN 1 of 2025 are disposed of, thereby setting aside the impugned order and restraining the defendants/respondent nos.1 and 2 from disturbing the peaceful possession and enjoyment of the plaintiffs/appellants in respect of the suit property and/or from creating any charge or encumbrance on the suit property till disposal of the suit without due process of law.
9. There will be no order as to costs.
10. We make it abundantly clear that the above findings are tentative in nature insofar as the suit is concerned and the learned Trial Judge will be at liberty to adjudicate the suit independently on its own merits without being influenced in any manner by any of the observations made in our order and/or the order impugned herein.
11. It is further made clear that nothing in this order shall adversely prejudice either of the parties in the proceeding pending at Delhi which has been referred to above and/or any other proceeding.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Uday Kumar, J.)